

REPORT / RECOMMENDATION



To: MAYOR AND COUNCIL

Agenda Item #: IV. M.

From: Wayne D. Houle, PE, Director of Engineering

Action ☒

Discussion ☐

Date: January 8, 2013

Information ☐

Subject: Resolution No. 2013-09 Joint Powers Agreement with City of Bloomington, Eden Prairie and Edina

Action Requested:

Approve Resolution No. 2013-09 authorizing Mayor and Manager to sign the Joint Powers Agreement between the City of Bloomington, the City of Eden Prairie and the City of Edina for maintenance of local roadways located at the I494 / TH169 interchange.

Information / Background:

The I494 / TH169 interchange recently opened for traffic. As part of the interchange project, the local roadways between the cities of Bloomington, Eden Prairie, and Edina were connected and provide local circulation around the interchange. Due to the complexity of this local roadway system, staff and legal counsel from the three cities have worked together to develop the attached Joint Powers Agreement, which is essentially a maintenance agreement between the three cities.

Attachments:

- Resolution No. 2013-09
- Joint Powers Agreement Between The City of Bloomington, The City of Eden Prairie, and The City of Edina



RESOLUTION NO. 2013-09
APPROVING
JOINT POWERS AGREEMENT BETWEEN
THE CITY OF BLOOMINGTON, THE CITY OF EDEN PRAIRIE,
AND THE CITY OF EDINA

WHEREAS, the Minnesota Department of Transportation has substantially completed the interchange of Interstate 494 / Trunk Highway 169, including the local roadways; and

WHEREAS, staff with the cities of Bloomington, Eden Prairie, and Edina have worked together to develop a joint powers agreement to provide for maintenance of the local roadway system;

NOW, THEREFORE, BE IT RESOLVED, Mayor James B. Hovland and City Manager Scott H. Neal, are hereby authorized and directed for and on behalf of the City to execute and enter into a joint powers agreement with the cities of Bloomington, Eden Prairie, and Edina; a copy of which said agreement was before the City Council and which is made a part hereof by reference.

ADOPTED this 8th day of January, 2013.

Attest:

Debra A. Mangan, City Clerk

James B. Hovland, Mayor

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

CERTIFICATE OF CITY CLERK

I, the undersigned duly appointed and acting City Clerk for the City of Edina do hereby certify that the attached and foregoing Resolution was duly adopted by the Edina City Council at its Regular Meeting of January 8, 2013, and as recorded in the Minutes of said Regular Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 20____.

City Clerk

**JOINT POWERS AGREEMENT
BETWEEN
THE CITY OF BLOOMINGTON,
THE CITY OF EDEN PRAIRIE,
AND
THE CITY OF EDINA**

THIS AGREEMENT ("Agreement") is entered into this ____ day of _____, 2013, by and between the **CITY OF BLOOMINGTON**, a Minnesota municipal corporation ("Bloomington"), and the **CITY OF EDEN PRAIRIE**, a Minnesota municipal corporation ("Eden Prairie"), and the **CITY OF EDINA**, a Minnesota municipal corporation ("Edina"), hereinafter collectively referred to as the "Cities."

RECITALS

WHEREAS, Minnesota Statutes § 471.59 authorizes two or more governmental units to enter into agreements to jointly or cooperatively exercise any power common to the contracting cities; and

WHEREAS, the Cities have had agreements in the past related to the provision of certain city services across jurisdictional lines, all of which agreements have expired; and

WHEREAS, any agreements between the three Cities as related to the Project Area as defined below and for the services described in this Agreement that have not expired are hereby superseded, except as provided herein; and

WHEREAS, the Cities now wish to memorialize past and current practices for the provision of these city services related to operation and maintenance, and to delineate insurance requirements and assignment of liability for provision of these city services; and

NOW THEREFORE, the Cities agree as follows:

1. **Recitals.** The foregoing recitals are correct and are incorporated herein.
2. **Purpose.** This Agreement shall establish the responsibilities of the Cities concerning the provision of the enumerated city services across jurisdictional lines in the specified locations.
3. **Definitions.** For purposes of this Agreement, the following definitions shall apply:
 - a. "Street Lighting" means the pole support, lamp support (davit) arm, lamp housing, and associated wiring and metering to provide light to public rights-of-way. Street lighting also includes "Wall Pack Units" which are the light housing and lamp that provide illumination to the underpass crossings of the U.S. Highway 169/Interstate 494 interchange.

- b. "Signal System" means control cabinets, mast arms, lamping, wiring, metering, pedestrian crossing units associated with the designated signal system, and payment of power costs, if applicable.
- c. "Public Storm Sewer" means the pipes, manholes, catch basins, catch basin leads, mainline, manholes, and sediment traps that collect the surface water within the city that are located in public rights-of-way or public easements.
- d. "Street Maintenance" means all minor and routine maintenance excluding street overlays and street reconstruction. The minor and routine maintenance includes, but is not limited to, minor street repair (patching, potholes and similar imperfections), snowplowing, street sweeping, striping, signage, sealcoating, minor curb and gutter repair, and other similar minor and routine repairs to streets. Overlay and Reconstruction work shall be subject to separate agreements.
- e. "Street Lighting Maintenance" means all maintenance and replacement, excluding system replacement. Maintenance includes, but is not limited to, fixture heads, lamp and/or ballast replacement, painting davit arm repair, knockdown repair/replacement (that are not covered via private insurance), other repairs to the street lighting system, and payment of power costs, if applicable.
- f. "Public Storm Sewer Maintenance" means routine inspection and cleaning of the system components, including manhole and catch basin adjustment as needed, interior maintenance of storm sewer system, pipe joints, manhole and catch basin interiors, to allow an unobstructed flow of storm waters.
- g. "Visual Barrier Maintenance" includes, but is not limited to, the staining/painting of barriers, mowing in the vicinity of the barriers, and general repair.

4. **Project Area Description.** The Project Area for this Agreement involves the U.S. Highway 169/Interstate 494 Interchange area as shown on **Exhibit A**, which is generally described as follows:

- a. For the north side of Interstate 494:
 - West 78th Street from West Bush Lake Road to Washington Avenue;
 - Viking Drive from Washington Avenue to Golden Triangle Drive;
 - Washington Avenue from West 78th Street north to the Bloomington/Edina corporate boundary in the northwest corner of Bloomington, and the southwest corner of Edina.
- b. For the South side of Interstate 494:
 - Telegraph Road from West Bush Lake Road to the east cul-de-sac terminus and Marth Road from West Bush Lake Road to Roundabout ("RAB") F in the southeast quadrant of the U.S. Highway 169/Interstate 494 interchange;
 - Washington Avenue from RAB F across the U.S. Highway 169/Interstate 494 corridor to the Washington Avenue bridge to RAB A at the intersection of Viking Drive/West 78th Street/Washington Avenue on the north side of Interstate 494;
 - West 78th Street from Washington Avenue to West Project Limits.
- c. For the East Project Limits:
 - West Bush Lake Road from Marth Road to West 78th Street.
 - Eastern terminus of Telegraph Road.

d. For the West Project Limits:

- The eastern edge of Golden Triangle Drive and its extension to the south.

Where there is a conflict between the Project Area Description and Exhibit A, Exhibit A shall control.

5. **Bloomington Obligations.**

- a. *Street Lighting, Street Maintenance, Sidewalks/Trails, Signing, Visual Barrier, and Turf Maintenance of Public Lands.* Bloomington will operate and maintain Street Lighting, Street Maintenance, Sidewalks/Trails, Signing, Visual Barrier and Turf Maintenance of Public Lands for the following street segments, as shown on the attached **Exhibit A**:
- i. Marth Road from West Bush Lake Road to RAB F in the southeast quadrant of the U.S. Highway 169/Interstate 494 interchange in Bloomington.
 - ii. Washington Avenue from RAB F in Bloomington to the southeasterly entrance to RAB D.
 - iii. Wall Pack Units under U.S. Highway 169 between RAB F in Bloomington and RAB E in Bloomington.
- b. *Signal Systems.* Bloomington will maintain the Signal Systems at:
- i. The intersection of West Bush Lake Road and Marth Road/Telegraph Road in Bloomington.
 - ii. The intersection of West Bush Lake Road and West 78th Street, north of the Interstate 494 corridor within Bloomington.
 - iii. Maintenance of the Signal System includes payment of power costs for the Signal System.
- c. *Public Storm Sewer.* Bloomington will operate and maintain the Public Storm Sewer for the following street segments, as shown on the attached **Exhibit A**:
- i. Marth Road from West Bush Lake Road in Bloomington to RAB F in the southeast quadrant of the U.S. Highway 169/Interstate 494 interchange Bloomington.
 - ii. Washington Avenue from RAB F in Bloomington to the southeasterly entrance to RAB D.
 - ii. Telegraph Road from West Bush lake Road to the east cul-de-sac terminus.
 - iv. The outlet from the chain of Anderson Lakes will be described in a separate agreement with the Minnesota Department of Transportation ("MnDOT").

6. **Eden Prairie Obligations.**

- a. *Street Lighting, Street Maintenance, Sidewalks/Trails, Signing, Visual Barrier, and Turf Maintenance of Public Lands.* Eden Prairie will operate and maintain

Street Lighting, Street Maintenance, Sidewalks/Trails, Signing, Visual Barrier, and Turf Maintenance of Public Lands for the following street segments, as shown on the attached **Exhibit A**:

- i. From the southeast entrance of RAB D in Bloomington westerly along West 78th Street.
- ii. Over the Washington Avenue/West 78th Street bridge owned by MnDoT along the corporate limit for Bloomington and Eden Prairie between RAB A and RAB D in Bloomington.
- iii. Viking Drive from the east entrance of RAB A at West 78th Street westerly into Eden Prairie.
- iv. Washington Avenue from RAB A northerly along the corporate limit for Bloomington and Eden Prairie.

b. *Public Storm Sewer.* Eden Prairie will operate and maintain the Public Storm Sewer for the following street segments, as shown on the attached **Exhibit A**:

- i. From the southeast entrance of RAB D in Bloomington westerly along West 78th Street.
- ii. Over the Washington Avenue/West 78th Street bridge owned by MnDoT along the corporate limit for Bloomington and Eden Prairie between RAB A and RAB D in Bloomington.
- iii. Viking Drive from the east entrance of RAB A at West 78th Street westerly into Eden Prairie.
- iv. Washington Avenue from RAB A northerly along the corporate limit for Bloomington and Eden Prairie.

7. **Edina Obligations.**

a. *Street Lighting, Street Maintenance, Sidewalks/Trails, Signing, Visual Barrier, and Turf Maintenance of Public Lands.* Edina will operate and maintain Street Lighting, Street Maintenance, Sidewalks/Trails, Signing, Visual Barrier, and Turf Maintenance of Public Lands for the following street segments, as shown on the attached **Exhibit A**:

- i. West 78th Street from West Bush Lake Road through RAB C and RAB B to the east entrance of RAB A.
- ii. The Wall Pack Units through the West 78th Street underpass of U.S. Highway 169.
- iii. The east frontage road of U.S. Highway 169 from RAB C to the north into Edina.

b. *Public Storm Sewer.* Edina will operate and maintain the Public Storm Sewer for the following street segments, as shown on the attached **Exhibit A**:

- i. West 78th Street from West Bush Lake Road through RAB C and RAB B to the east entrance of RAB A.
- ii. The east frontage road of U.S. Highway 169 from RAB C to the north into Edina.

8. **Street Lighting Standards.** As stated in the construction contract for the U.S. Highway/Interstate 494 interchange project (SP 2776-03), the local city street lighting components are to meet the City of Bloomington standards for materials, installation, and construction requirements in the Project Area defined by this Agreement. Future materials and supplies will be stored at the City of Bloomington. As each City needs materials and supplies for routine maintenance, City representatives will contact Bloomington to acquire the needed materials and will pay Bloomington for the cost of such materials, without profit to Bloomington, or handling or storage fees.
9. **Division of Costs.** Each City shall be responsible for the full cost of all personnel, equipment, and materials needed to complete the enumerated obligations.
10. **Marking Utilities and Utility Connections.** Each City shall be responsible for facilities owned by an individual City, regardless of location, for complying with the requirements of the Excavation Notice System, commonly referred to as “Gopher State One Call,” pursuant to Minnesota Statutes 216D and Minnesota Rule 7560, as may be amended from time to time. Connections may be made only with the consent of the owner of a facility, regardless of location. When utility connections are made to a facility owned by another individual City, 30 days prior to connection, the connecting City shall notify the owner City of the intent to connect. The connection shall be done in accordance with the owner City’s specifications as to materials. The owner City shall have the opportunity to review and approve the plans and specifications of the connecting City prior to commencement of construction. Approval of the plans and specifications will not be unreasonably withheld by the owner City.
11. **Indemnification.**
 - a. Each city shall be liable for its own acts and the results thereof to the extent provided by law and agrees to defend, indemnify and hold harmless each other (including their officials, employees, volunteers and agents), from any liability, claims, causes of action, judgments, damages, losses, costs or expenses, including reasonable attorney’s fees, resulting directly or indirectly from any act or omission of the party, anyone directly or indirectly employed by it, and/or anyone for whose acts and/or omissions it may be liable, in the performance or failure to perform its obligations under this Agreement. Each city’s liability shall be governed by the provisions of Minnesota Statutes, Chapter 466 and other applicable law.
 - b. Each city warrants that it has a purchased insurance or has a self-insurance program.
 - c. *Duty to Notify.* Each city shall promptly notify the others of any claim, action, cause of action or litigation brought against the party, its employees, officers, agents or subcontractors, which arises out of the services contained in this Agreement and should also notify the other cities whenever any city has a

reasonable basis for believing that the city, and/or its employees, officers, agents or subcontractors, and/or the other cities might become the subject of a claim, action, cause of action or litigation arising out of the services contained in the Agreement.

12. **Land Use Controls and Controlling Ordinances.** All of the enumerated street segments shall remain subject to the Land Use Controls and Code of Ordinances of the City in which the street segment is located, regardless of the City to which the enumerated obligation is assigned.
13. **Right of Entry.** City staff from each of the Cities shall have the right to enter upon the property and public easements of the other Cities for the purpose of performing the obligations enumerated in this Agreement, as well as other City services related to the performance of obligations enumerated in this Agreement, including, but not limited to, building inspections, assessment inspections, reading water meters and the like.
14. **No Transfer of Ownership.** Nothing in this Agreement is intended to transfer ownership of any real property or improvements thereon from one City to another.
15. **Coordination of Future Overlay, Replacement; Assessment Authority.**
The Cities shall confer whenever overlay, replacement or other work is planned for the street segments that would affect the other Cities and their enumerated obligations. Each City retains its individual statutory authority to assess for projects within its corporate limits.
16. **Future Boundary Adjustments.** If the corporate boundary of any of the Cities is adjusted, the Cities shall confer to determine what changes, if any, are necessary to this Agreement. Until such time that changes to this Agreement are made, each City's obligations described herein shall continue regardless of location after a boundary adjustment.
17. **Termination.** Each City may terminate this Agreement upon 6 months advance written notice to the other Cities.
18. **Invalidation of Certain Provisions.** If any clause, term or provision of this Agreement, or the application thereof to any person or circumstance shall to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
19. **Counterparts.** This Agreement may be executed in identical counterparts, each of which, when bearing original initials of the parties on each page and at each change in the text hereof as well as original signatures at the end of each document, shall constitute an

original for all purposes. Subsequent changes shall not be binding unless reduced to writing and signed by the Cities.

20. **Notices.** Any notices required by this Agreement will be made in writing and directed as follows:

If to the City of Bloomington:

City of Bloomington
ATTN: Mark Bernhardson, City Manager
1800 West Old Shakopee Road
Bloomington, Minnesota 55431

With a copy to:

Sandra Johnson, City Attorney
1800 West Old Shakopee Road
Bloomington, Minnesota 55431

If to the City of Eden Prairie:

City of Eden Prairie
ATTN: Rick Getschow, City Manager
8080 Mitchell Road
Eden Prairie, Minnesota 55344

With a copy to:

Ric Rosow, City Attorney
Gregerson, Rosow, Johnson & Nilan, Ltd.
650 – 3rd Avenue South, Suite 1600
Minneapolis, Minnesota 55402

If to the City of Edina:

City of Edina
ATTN: Scott Neal, City Manager
4801 West 50th Street
Edina, Minnesota 55424

With a copy to:

Roger Knutson, City Attorney
Campbell Knutson, PA
1380 Corporate Center Drive
Eagan, Minnesota 55121

21. **Other Provisions.**

This Agreement has been made under the laws of the State of Minnesota, and such laws will control its interpretation.

- a. This Agreement shall not be effective or binding upon the Cities unless and until approved by the City Council of each City.
- b. The headings and section numbers appearing in this Agreement are not intended in any manner to define, limit or describe the scope of any such section, and are solely inserted for ready reference purposes.

IN WITNESS WHEREOF, the parties have hereto executed this Agreement on the day and year first above written.

[signature pages follow]

CITY OF BLOOMINGTON

By: _____
Gene Winstead
Its: Mayor

By: _____
Mark E. Bernhardson
Its: City Manager

Approved as to form and execution:

Sandra H. Johnson
City Attorney

CITY OF EDEN PRAIRIE

By: _____
Nancy Tyra-Lukens
Its: Mayor

By: _____
Rick Getschow
Its: City Manager

Approved as to form and execution:

Ric Rosow
City Attorney

CITY OF EDINA

By: _____
James Hovland
Its: Mayor

By: _____
Scott Neal
Its: City Manager

Approved as to form and execution:

Roger Knutson
City Attorney

EXHIBIT A

Exhibit A - Streets, Lighting, Signals, Walls and Storm Sewer

LEGEND

City of Eden Prairie

City of Edina

City of Bloomington

Freeway Ramps Are MnDOT

Visual Barrier Wall

Municipal Boundary

Bloomington maintains signal system

MnDOT maintains all freeway ramps and the area inside of ramps, with the exception of storm water ponds

DISCLAIMER
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1" = 400'